Enforcement of Trespass on Salmon Arm Timber Sales

Complaint Investigation 000260

FPB/IRC/51

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The Investigation

The complainant is a salvage contractor who has operated in the Salmon Arm Forest District since 1984. In May 1999, while considering a bid on a small-scale salvage licence near Three Valley Gap, he observed signs of what he believed to be unauthorized timber harvest. He promptly reported a trespass to the forest district office. In June 1999, he complained to the Board that the response to his report was inappropriate. The Board did not investigate that complaint because the Comptroller General was carrying out an internal government audit of the district's small business timber administration process.

In November 1999, the complainant observed signs of what he believed to be an unauthorized timber harvest near another block he was considering for a bid, this one near Anglemont. He made another trespass report to the district office.

In September 2000, he filed a second complaint to the Board about both instances of trespass, and asserted that enforcement was inappropriate. The Board noted that the internal audit that might have resolved the complaint had still not been completed, so it decided to investigate.

Background

Both alleged trespasses occurred on or near cutblocks that had been designated under the Ministry of Forests Small Scale Salvage Program, which had been added to the Small Business Forest Enterprise Program in 1998. The Small Scale Salvage Program was designed to increase the volume of timber sold and the opportunities available to small-scale salvage operators. The program identifies and sells small and often scattered volumes of trees that are damaged by fire or dead and down due to biological or human factors.

District staff decided to create more opportunities for salvaging cedar shakes under the Small Scale Salvage Program. However, district staff did not have the specialized expertise to identify viable areas for small-scale cedar salvage. Therefore, they decided to try contracting shake block cutters to lay out the cutblocks. The contractors were paid to find suitable timber for salvage and to mark the boundaries for proposed cutblocks. The district then drew up timber sale licences and either advertized the sales competitively or, if the sale was small, awarded it directly to an operator. If the cutblocks were to be sold competitively, the shake block contractors who found and laid out the cutblocks knew beforehand that they would not receive preferential treatment. They could bid on the cutblocks they had laid out, but would be awarded the sale only if they submitted the best bid.

The contractors were not required to mark the boundaries of areas they identified in a specific manner. In addition, surveying skills were not required for locating and marking the boundaries of these salvage sales. As a result, some cutblocks were poorly marked, making it difficult to locate the original cutblock boundaries after the harvesting had taken place. The board examined whether the marking of cutblock boundaries complied with the Code.

Relevant Legislation

Taking timber without authorization contravenes section 96 of the *Forest Practices Code of British Columbia Act*. That section says, in part, that a person must not cut, damage or destroy Crown timber unless authorized to do so under an agreement under the *Forest Act*. If a person cuts

timber without such authorization, the timber can be seized. Under section 119 of the *Forest Practices Code of British Columbia Act*, the trespasser can be fined the amount that would have been due to government if the timber were sold, plus a penalty of twice the market value of the timber.

Issues

1. Did marking of the cutblock boundaries for timber sales at issue comply with the Code?

2. Did the Ministry of Forests (MOF) appropriately enforce the Code in response to the complainant's assertions of trespass?

Discussion

1. Marking of the timber sales

Until mid-1998, the Code required that a person carrying out timber harvesting mark cutblock boundaries in the field so that they were visible at the completion of harvesting. Currently, that requirement only applies to wildlife trees and wildlife tree patches.

In 1999, district staff believed that having cedar shake salvagers, rather than technicians, lay out cutblocks was a low-risk and low-cost way to identify more cedar shake areas for competitive sale. Although the standard practice was to mark cutblock boundaries with paint and ribbons, district staff did not insist that the cedar shake salvagers do such marking. In the case of the Anglemont cutblock, the salvager had simply marked the boundary with ribbon. When enforcement staff visited the site to check whether a trespass had occurred, they could not determine whether the original location of the boundary line had been moved.

Effective enforcement of a trespass complaint relies on knowing where the cutblock boundaries are on the ground. Ineffective marking of boundaries complicated the district's ability to determine whether a trespass had occurred.

By the end of 2000, district staff had decided the experiment of accepting lower standards for locating small-scale salvage areas was not successful. The district began to use qualified layout technicians to ribbon, paint and survey boundaries of all competitively bid small-scale salvage sales.

2. Enforcement of trespass reports

a) The Three Valley Gap Trespass Complaint

On April 15, 1998, 200 square metres of windthrown timber in TSL A58303, at Three Valley Gap, was directly awarded to the complainant. The complainant had difficulty getting permission from the Ministry of Transportation and Highways to access the cutblock from the Trans Canada Highway, which delayed his harvesting. Ultimately, the complainant decided he did not want to complete the timber sale. MOF staff agreed that the complainant need not complete the sale and refunded his deposit. In December 1998, a portion of the area of TSL A58303 was sold to another contractor who completed harvesting by April 20, 1999. Scale returns indicated that 179 square metres were taken from that timber sale. District staff saw no indications of trespass during a final inspection of the sale on April 22, 1999.

In May 1999, the complainant told the district office that he believed the contractor who harvested the area had taken wood outside of the sale area. Compliance and enforcement staff investigated in late June. They confirmed that someone had cut shake blocks from downed logs and standing snags on a road just outside the area of the complainant's former timber sale. However, they found no evidence to suggest who had done so and they did not investigate further.

b) The Anglemont Trespass Complaint

The district offered TSL A60315 near Anglemont for competitive sale and awarded it in June 1999. The maximum allowable volume was 200 cubic metres. The complainant did not bid on that sale but he went on site in September 1999. He believed wood was taken from outside that cutblock, and the volume attributed to the authorized area of the sale. The complainant believed that 565 square metres had been attributed to the authorized sale area, much more than the maximum allowable volume. He reported a suspected trespass to the district on November 11, 1999.

The complainant's estimate of 565 square metres appears to have been an error. A district harvest billing report of September 29, 1999 does refer to 565 square metres, but that is a total for three timber sales. Only 171 square metres are shown as scaled to TSL A60315. Regardless, district enforcement staff took a helicopter in to the site to investigate on November 30. They could not land in deep snow, but they examined the area from the air. By May 23, 2000, the snow had cleared and enforcement staff hiked in for a closer inspection. They had some difficulty locating the poorly-marked boundary. District staff did not see the trespass indicators reported by the complainant, but they thought the complainant might have made his observations in a different, adjacent area. District staff did see two trees that had been cut outside the cutblock, but those were danger trees that could be felled, but not utilized, under the licence. Small portions (three to four metres) of the butts had been used to make shake bolts, contravening the licence conditions. However, the volume taken in trespass was minor. The trespass investigation was stopped because there was no evidence of significant trespass.

Conclusions

Regarding the marking of small salvage sale boundaries, the Board concludes there was no issue pertaining to compliance. Since 1998, the Code has no requirement for boundary marking. The Board believes that the district staff's effort to minimize cost and bureaucracy for small sales was well motivated. However, if enforcement is to be effective, district staff must find a cost-effective way to durably mark datum point or location reference benchmarks on the ground. Otherwise, it becomes very difficult to reliably locate boundaries of small sales.

The Board did not assess whether the current district layout procedure is a cost-effective way to locate benchmarks.

Regarding the enforcement angle of the complainant's reports of possible trespass, the Board notes that district staff agreed there was evidence of some trespass in both cases reported by the complainant. District staff investigated both reports in a timely manner – within six weeks in the case of Three Valley Gap and as soon as snow conditions allowed for Anglemont. In Three Valley Gap, enforcement staff did not find enough information to determine who had committed the trespass. In Anglemont, enforcement staff found that the extent of the trespass was too small to warrant further action.

The Board considers that the district's enforcement response to the complainant's trespass reports was appropriate.